

**OPINION  
45-261**

October 27, 1945 (OPINION)

SCHOOL DISTRICTS

RE: Building Funds - How Created

Re: Establishment of Building Fund

Your letter of recent date with reference to establishment of a building fund for Dickinson public school district has been received and contents noted.

You enclosed a resolution adopted by the board of education of the Dickinson school district which sets forth that according to the audit of the school district as of July 1, 1945 there is a balance in the sinking fund of \$33,908.71; that this balance consists of earnings on investments credited to the sinking fund and includes receipts from other sources also credited to the 1922 sinking fund to a sum in excess of \$25,000.00; further that the entire bond issue for which the sinking fund was established and levied has been fully paid and satisfied.

The resolution, which is dated October 9, 1945, then provides that the school treasurer be ordered to transfer \$25,000.00 of said fund from the sinking fund to the building fund, and that all such transferred funds be invested or re-invested in government bonds.

You desire an opinion from this office as to whether the board may legally transfer this balance or a part thereof to the building fund.

Section 21-0345 of the 1943 Revised Code, which is the same as subdivision 5 of section 20 of chapter 196, Session Laws of 1927, provides that, "Any surplus in a sinking fund after all of the bonds for the payment of which the fund was created have been paid and canceled and after all investments of the second and third class finally have been disposed of or realized upon, shall be placed in the general fund of the municipal treasury."

Chapter 311 of the Session Laws of 1945 authorizes school districts to establish a building fund - two methods are provided. One method is by submitting the matter to a vote of the electors. With that method we are not concerned for this purpose. The other method provides that the governing body of such school district may create such building fund by appropriating and setting up in its budget for such an amount not in excess of twenty percent of the current annual appropriation for all other purposes combined, exclusive of appropriations to pay interest and principal of the bonded debt, and not in excess of the limitations prescribed by law.

It will thus be seen that a school district has the power and authority under the chapter quoted to establish a building fund which may equal a sum not in excess of twenty percent of the current annual appropriation for all other purposes combined, provided that the same would not be in excess of the limitations prescribed by law.

In estimating the budget and making the levy for the ensuing year, the governing body of the school district is required to take into consideration the unexpended balance on hand in the general fund. At the time your district prepared its budget and levy for the ensuing year, it was required to take into consideration the balance on hand in the general fund, which balance would include the balance in the interest and sinking fund, upon which there were no further claims. Since it may establish a building fund by the method to which I have referred, I see no practical difference between the results in setting aside the balance of \$25,000.00 in the sinking fund and establishing a building fund by the levy method provided the said sum of \$25,000.00 does not exceed twenty percent of the current annual appropriations for a sinking fund and provided it would not be in excess of the levy limitations prescribed by law.

Stated in a different way, if the \$25,000.00 balance now remaining in the sinking fund does not exceed twenty percent of the current annual appropriation for all other purposes combined, and which, if added to the general levy, is not in excess of the limitations prescribed by law, then I see no valid reason why the said sum of \$25,000.00 may not be transferred from the sinking fund, upon which there is no longer any claim, to the building fund.

NELS G. JOHNSON

Attorney General